

DEC 08 2005Bills v. City of Rialto, et al., No. 03-56212

JOHN R. GIBSON, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent.

Bills argues that detaining him for more than an hour in improperly applied handcuffs, without checking on his wrists despite his repeated complaints that the handcuffs were hurting him, violated his clearly established constitutional rights, and a reasonable officer could not believe this form of detention to be constitutional. Viewing the facts in the light most favorable to Bills, the record supports Bills' factual predicate. Police were aware of his pain, and despite Bills's repeated requests that the handcuffs be adjusted, police did not even check his handcuffs. Bills was diagnosed with complex regional pain syndrome caused by nerve damage to his right wrist. In addition, there was no shortage of police to ensure that Bills would remain in place, as there were approximately ten officers on the scene.

In Muehler v. Mena, 125 S. Ct. 1465 (2005), Justice Kennedy cast the deciding vote in a five to four decision. Justice Kennedy's concurring opinion expressly leaves the door open for the kind of claim Bills asserts:

The reasonableness calculation under [Graham v. Connor, 490 U.S. 386 (1989)] is in part a function of the expected and actual duration of the search. If the search extends to the point when the handcuffs can cause real pain or serious discomfort, provision must be made to alter the conditions of detention at least long enough to attend to the needs of the detainee. This is so even if there is no question that the initial handcuffing was objectively reasonable. The restraint should also be

removed if, at any point during the search, it would be readily apparent to any objectively reasonable officer that removing the handcuffs would not compromise the officers' safety or risk interference or substantial delay in the execution of the search.

125 S. Ct. at 1472.

The record in this case shows that Bills did not get to submit this kind of claim to the jury. The court submitted to the jury a specific question as to whether each defendant used "excessive force upon the plaintiff, Patrick Bills," and the jury answered no to both questions. (Record Excerpts Vol. II p. 425.) In the instructions conference, the district court made it abundantly clear that it had already ruled out any claim based on the propriety of detention and the length of detention, including any claim based on the time Bills was handcuffed. The court made very clear that counsel could not argue the length of time was a basis for liability: "And to the extent if there is any argument that they detained him too long, I would sustain an objection to it. And even if an objection isn't made, I would probably reprimand counsel." (Record Excerpts Vol. II p. 377.) Counsel for Bills stated that she would not make any argument that the handcuffs should have been removed any quicker. (Record Excerpts Vol. II p. 378.) The court replied, "So the length of time goes to whether he was damaged and the extent of his injuries. . . . [M]y ruling on the summary judgment motion . . . doesn't cover the fact that if the jury finds he was handcuffed improperly,

the longer it lasted the greater his damages.” (Record Excerpts Vol. II pp. 378-79.) Counsel for Bills stated, "So, within that time we can argue that the time it became excessive, but not to the point where they should have been removed." The court added, “Or shouldn’t have been applied that way in the first place.” (Record Excerpts Vol. II p. 379.)

The district judge thus allowed argument of length of time limited to the issue of damages, but Bills’s argument is that he was entitled to have this issue submitted as a substantive ground for recovery, and the district judge refused to do so. I believe the district court erred in refusing to submit that issue articulated in Justice Kennedy’s concurring opinion as set out above.

I believe the district court erred in refusing to submit the issue of the length of detention and that Bills has been denied the chance for a trial of a viable claim.